

## SERVICES AGREEMENT

This Services Agreement (this "Agreement") is made and entered into as of the 1<sup>st</sup> day of January, 2016 by and between the University of South Florida Board of Trustees, a public body corporate acting for and on behalf of the USF Intercollegiate Athletics Department (the "University"), with an address at 4202 East Fowler Ave., ATH100, Tampa, FL 33620 and The Aspire Sport Marketing Group LLC. ("Aspire" or the "Service Provider"), with an address at 1720 Peachtree Street NW Suite 1062, Atlanta, GA 30309.

In consideration of the mutual promises herein contained, Service Provider shall provide to the University the services set forth in this Agreement under the following terms and conditions:

1. **Type of Services:** Service Provider agrees to provide the services set forth in Attachment A here to and incorporated herein Scope of Work ("SOW").
2. **Term:** The term of this Agreement shall commence on January 1<sup>st</sup>, 2016, and extend until December 31<sup>st</sup>, 2018, with the option to extend an additional 1 or 2 years based upon attaining mutually agreed upon performance standards and as agreed to via a signed writing by the parties (the "Term"). The extension will be agreed upon by the parties no later than October 1<sup>st</sup>, 2018 for the 1<sup>st</sup> year extension option and October 1<sup>st</sup>, 2019 for the 2<sup>nd</sup> year extension option. Either party may terminate this Agreement by providing the other party with at least 120 days' notice in accordance with the notice provisions set forth herein.
3. **Service Provider Personnel:** Service Provider shall, at its sole cost and expense, furnish the employees set forth in the SOW (the "Service Provider Personnel"). Service Provider has sole and complete responsibility to hire, train, supervise, discipline, direct the time, manner and method of accomplishing work performed, and terminate any Service Provider Personnel. Notwithstanding the foregoing, the University shall maintain the right to review and approve all Service Provider's employees assigned to perform the services, prior to working at the University location.
  - A. Service Provider represents and warrants that the Service Provider Personnel it provides under this Agreement shall be honest, courteous, and competent with sufficient skills and training to perform the Services in an effective and professional manner. Service Provider shall be responsible for all compensation paid to and for the cost of any mandatory or customary benefits paid on behalf of the Service Provider Personnel, including but not limited to, all employers federal, state and social security taxes, federal and state employment taxes and any other personnel taxes required by law. Service Provider will require all Service Provider Personnel to execute an acknowledgment that affirms that they are exclusively the employees of Service Provider, that they are not employed by the University or the State of Florida, and that they are not entitled to, nor do they have any expectation of the benefits afforded public employees, including without limitation membership in the Florida Public Employees Retirement System.
  - B. Service Provider agrees to meet with the University regularly on routine personnel issues, and on demand for any problems or challenges with reasonable advance notice. If the University reasonably objects to the manner of performance of any Service Provider Personnel, Service Provider shall immediately take all necessary actions to rectify the objections, including, if

necessary, the prompt removal of the Service Provider Personnel from the provision of Services to the University and to provide a satisfactory replacement as soon thereafter as possible.

- C. Service Provider shall be responsible for ensuring that all Service Provider Personnel comply with all rules of the NCAA and AAC or any subsequent conference in which the University is a member, in addition to University regulations and policies while on University property, at University events, or acting as a representative of the University. University's regulations and policies are available at <http://regulationspolicies.usf.edu/>. All Service Provider Personnel shall pass a Level 1 background check as defined and in accordance with Chapter 435, Florida Statutes. Service Provider shall promptly notify University of any violation or alleged violation of the terms of this section by Service Provider and/or Service Provider Personnel.
  - D. Service Provider warrants that it and its Service Provider Personnel are in compliance with all federal, state and local civil and human rights laws and any other local, state and federal law, regulation or ordinance related to Service Provider's employment or engagement of such persons in connection with Service Provider's performance under this Agreement.
4. **Mutual Indemnity:** The Service Provider agrees to indemnify, defend and hold the University, and its Board of Trustees, directors, employees, consultants and agents ("Indemnified Parties" or individually "Indemnified Party") harmless from and against any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and court costs, to which the Indemnified Parties may become subject arising in any manner out of or in connection with this Agreement and the rendering of Services by Service Provider hereunder or the rendering of additional services by Service Provider as requested by the University, unless any such losses, claims, damages or liabilities resulted directly from the gross negligence or willful misconduct of the Indemnified Parties, or resulted directly from the Indemnified Parties' failure to comply with state and federal law. The Service Provider will not, without prior written consent of the University, settle any pending or threatened claim or proceeding related to or arising out of the engagement or any actual or proposed transactions, or other related conduct unless such settlement includes provisions unconditionally releasing the University and each other Indemnified Party from all liability in respect to the claims by the releasing party related thereto, or arising out of the engagement or any actual or proposed transaction or other unrelated conduct. Solely to the extent provided by the scope, provisions, and limits of § 768.28, Florida Statutes, University shall defend, indemnify, and hold harmless Service Provider and its officers, directors, employees, agents and contractors ("Service Provider Indemnified Parties") from any claims for damages or liability arising out the wrongful acts or omissions of its employees while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant. University will not, without prior written consent of the Service Provider, settle any pending or threatened claim or proceeding related to or arising out of the engagement or any actual or proposed transactions, or other related conduct unless such settlement includes provisions unconditionally releasing the University and the Service Provider Indemnified Parties from all liability in respect to the claims by the releasing party related thereto, or arising out of the engagement or any actual or proposed transaction or other unrelated conduct.
5. **Insurance Provision:** Service Provider agrees to carry, at its own cost and expense, the insurance policies described herein and submit to University at execution of this Agreement, evidence thereof in the form of current certificates of insurance certifying all coverage. All policies and certificates of

insurance except workers compensation shall be endorsed to name the University of South Florida Board of Trustees as additionally insured and provide for the insurer's waiver of subrogation in favor of University and such coverage shall be deemed as primary coverage irrespective of any insurance maintained by the University. All certificates shall contain the provision that the insurance shall not be canceled for any reason, except after thirty (30) days written notice.

The following insurance coverage is the minimum required which shall be primary coverage and shall not relieve the Service Provider of any liability where liability for injury, death, and property damage is greater than the insurance coverage for bodily injury, death or property damage to third parties:

- A. Commercial General Liability Insurance Coverage - for bodily injury, death or property damage to third parties. The policy shall provide minimum coverage of \$1,000,000.00 combined single limit per occurrence and \$2,000,000 annual aggregate. This policy shall be endorsed to name the University as an additional insured and such coverage shall be deemed as primary coverage irrespective of any insurance maintained by the University.
- B. Worker's Compensation and Employer's Liability insurance which provides statutory coverage in accordance with the Worker's Compensation Laws of the State of Florida and Employer's Liability coverage with limits of not less than:
  - \$1,000,000 each employee for Bodily Injury by Accident \$1,000,000 each employee for Bodily Injury by Disease \$1,000,000 Bodily Injury by Disease ~~policy limit~~
  - Business Automobile Liability insurance covering all non-owned and hired vehicles with a combined single limit of \$1,000,000 each accident and in the aggregate

~~Failure to maintain insurance coverage throughout the life of the contract, consistent with the provisions of this Section, shall be considered a breach of contract.~~

6. **Warranties:** Service Provider warrants that it shall perform all Services in an acceptable and workmanlike manner, and in accordance with all applicable federal, state, local or municipal laws and regulations. Further, Service Provider warrants and represents that it is financially solvent, responsible and experienced in and competent to perform the type of work required hereunder, and that it is familiar with all applicable laws, ordinances, and regulations governing the work, required hereunder. The University agrees that it will only exclusively use the Service Provider and University's employees in conjunction with the sale of all tickets as listed above and further agrees that no other 3<sup>rd</sup> party vendor will be utilized for the Services and Scope of Work.
7. **Reports and Data:** Service Provider shall provide to the University daily and weekly sales call reports and other data as requested by the University for monitoring and evaluation purposes. The costs of developing and periodically furnishing all such electronic data processed reports shall be borne by the Service Provider. Similarly, the costs of any reasonable revisions and additions or deletions to these electronic data processing reports shall be borne by the Service Provider.
8. **Costs Assumed by the Service Provider;** It is expressly understood and agreed that all costs of the Service Provider of whatever kind or nature and whether imposed directly upon Service Provider under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the performance or operation of the Services or otherwise under this Agreement

shall be borne by Service Provider subject to timely reimbursement from the University if such expenses are incurred in accordance with the requirements of § 112.061, Florida Statutes, under the mutually agreed upon scope of work (Attachment A), expenses outside of the scope of work will be borne solely by Service Provider. The entire and complete cost and expense of Service Provider's services and operation hereunder shall be borne solely by the Service Provider and under no circumstances shall University be liable to any third party (including Service Provider's employees) for any such costs and expenses incurred by Service Provider.

9. **Overtime:** In compliance with the U.S. Department of Labor and the Fair Labor Standards Act, all non-exempt Service Provider employees that work more than forty (40) hours in a workweek, defined as [Sunday through Saturday?], shall receive overtime pay at a rate of 1.5 times their hourly rate on a 40 hour work week scale. Note that all expense projections provided by Service Provider are bound within the assumption of no overtime pay over a given fiscal year. At the election, and mutual agreement of the University and Service Provider, any accrued overtime hours by Service Provider employees shall be invoiced back within the standards set forth by the Agreement. Note, as thresholds for wage qualification for overtime pay change over the course of the Agreement, Service Provider will directly implement such State & Government mandated standards. Overtime is defined as any hour worked over the standard 40 hour workweek.
10. **Access to Records:** ~~The University shall have full access to~~ all records, including, but not limited to financial records, in connection with this Agreement. All financial records must be maintained separately from all other accounts and shall be subject to audit or inspection by the University at any time.
11. **Use of Name/Trademarks:** Service Provider shall not use the University's name in any fashion, nor ~~issue any publicity releases, including but not limited to, news releases and advertising,~~ without prior written consent of the University. During the term of this Agreement, University grants to Service Provider a limited, non-exclusive, royalty free, revocable, license to use select logos and trademarks as defined by University during the Term of the Agreement including any renewals or extensions thereof, subject to University's prior review and approval.
12. **Confidential/Proprietary Information:** Except as otherwise required by applicable laws or regulations, University and Service Provider agree to, and to cause their respective affiliates to keep confidential all non-public information relating to the parties and the Agreement and to not use any such information for any purpose unrelated to this Agreement, except information which: (1) becomes known to the other from a source which is not obligated to keep such information confidential; or (2) becomes generally available to the public; or (3) is required to be disclosed by law or pursuant to court order or lawful subpoena; provided however; that these restrictions shall not apply to the disclosure of such information to the parties' respective attorneys, accountants and advisors who's need access to such information to provide services to Service Provider.
13. **Compliance with University Policies:** Service Provider shall comply with all policies and procedures of the University, NCAA, AAC rules, regulations and policies, or any other conference of which the University should become a member during the Term, when on University property and when performing its duties and obligations under this agreement. In addition, in performing its duties and fulfilling its obligations hereunder, Service Provider shall plan and conduct its

operations so as not to delay, endanger, or interfere with the operation of others at the University of South Florida.

14. **Independent Contractor:** Service Provider shall operate as an independent contractor under the terms of this Agreement and not as an agent or employee of the University. Service Provider shall have complete control of its agents, subcontractors, and employees engaged in the performance of this Agreement. Though employees of Service Provider, there shall be no distinguishable difference between agents of Service Provider or University employees.
15. **Equal Employment Opportunity:** Service Provider shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age, or physical or mental disability. Service Provider shall take affirmative action to ensure that applicants are employed and that the employees are treated during employment without regard to their race, creed, color, religion, national origin, sex, age, or physical or mental disability except where it related to a bona fide occupational qualification. Service Provider shall comply with all relevant County, State and Federal regulations. This Agreement shall be subject to all of the above relevant regulations, and Service Provider shall comply with all provisions of the laws.
16. **Entire Agreement:** This Agreement represents the entire agreement between the parties on the subject matter hereof and supersedes all prior discussions, agreements and understanding ~~between them~~. No modification or amendment of this Agreement ~~will be effective unless in writing and signed by both parties~~.
17. **Governing Law: Governing Law, Dispute Resolution:** ~~In the event of a dispute between the parties arising out of this agreement, the parties agree to work in good faith to amicably resolve it. This Agreement shall be governed by and construed according to the laws of the State of Florida. All claims for damages or injunctive relief shall be brought in the appropriate state or federal court located in Tampa, Florida and the parties irrevocably submit to the personal jurisdiction of such courts.~~
18. **Waiver:** Failure of a party at any time to require performance of any provision herein or failure to provide notice of breach or violation of any provisions shall not operate as a waiver by such party and shall not affect such party's right to request strict performance of any provision herein.
19. **Severability:** If any portion of this Agreement is invalid or unenforceable for any reason, the remaining portions of this Agreement shall be severable and shall remain in full force and effect.
20. **Signatures:** This Agreement may be executed in multiple counterparts, each one of which shall be deemed to be an original, but all of which shall constitute but one and the same Agreement. Signatures on this Agreement transmitted via facsimile or scanned and transmitted by electronic mail (email) shall be treated as an original for all purposes hereunder. The signatures appearing below are authorized signatures of the respective parties.
21. **Assignment:** Neither party may assign nor delegate any of its rights, duties, nor obligations hereunder without prior written consent of the other party and any attempt to do so shall be null and void. If an assignment is approved or if Service Provider is approved to subcontract any of its obligations herein, Service Provider shall remain primarily obligated to University and shall ensure

that the subcontractor(s) contractually agreed to comply with the terms of this Agreement.

- 22. Notices:** Any notice required or permitted to be given under this Agreement shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight courier service, or personally delivered to a representative of the receiving party. All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended, at its address set forth below:

If to the University: University of South Florida  
4202 E. Fowler Ave., ATH100  
Tampa, FL 33620  
Attn: Mark Harlan, Director of Athletics

With copy to:

University of South Florida  
4202 E. Fowler Ave., AOC200  
Tampa, FL 33620  
Attn: Michael J. Abernethy

If to the Service Provider: The Aspire Sport Marketing Group LLC.  
1720 Peachtree Street NW Suite 1062  
Atlanta, GA 30309  
Attn: ~~Bernard J. Mullin, Chairman and CEO~~

or at such other address as either party hereto shall notify the other in writing.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written.

University of South Florida  
4202 E. Fowler Ave., AOC200  
Tampa, FL 33620

By:

Digitally signed by Michael J. Abernethy  
DN: cn=Michael J. Abernethy, o=University of South  
Florida, ou=Purchasing Services,  
email=abernethy@usf.edu, c=US  
Date: 2016.02.01 14:35:54 -05'00'

Michael J. Abernethy, Director of  
Purchasing

Date: 2/1/2016

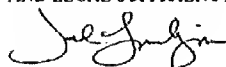
The Aspire Sport Marketing Group LLC.  
1720 Peachtree Street NW Suite 1062  
Atlanta, GA 30309

By:

Bernard Mullin, Chairman/CEO

Date: 1/25/16

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY



Joel Londrigan  
ATTORNEY - USF